

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CHARLES BUCKLEY,	:	CIVIL ACTION
<i>Petitioner</i>	:	
	:	
v.	:	
	:	
TINA WALKER, et al.,	:	
<i>Respondents</i>	:	NO. 22-665

**ORDER**

NOW, this **28th day of February 2025**, upon consideration of Petitioner’s Petition for Writ of *Habeas Corpus* (ECF No. 1), the Respondents’ Response (ECF No. 16) and Supplemental Response (ECF No. 19), and after review of the Report and Recommendation filed by United States Magistrate Judge Arteaga (ECF No. 21), Petitioner’s Objections to the Report and Recommendation (ECF No. 29), Petitioner’s Motion for Stay and Abeyance (ECF No. 30), and after a thorough and independent review of the record, it is **ORDERED** that:

1. The Petitioner’s objections are **OVERRULED**;
2. The Report and Recommendation of Magistrate Judge Arteaga (ECF No. 21) is **APPROVED** and **ADOPTED**;
3. The Petition for Writ of *Habeas Corpus* is **DISMISSED WITH PREJUDICE**;
4. The Motion for Stay and Abeyance (ECF No. 30) is **DENIED AS MOOT**<sup>1</sup>; and
5. No certificate of appealability will issue because the Petitioner has not made a

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<sup>1</sup> Stay and Abeyance is a remedy “available only in limited circumstances” where “the district court determines there was good cause for the petitioner’s failure to exhaust his claims first in state court.” *Rhines v. Weber*, 544 U.S. 269, 270 (2005). The decision of whether Buckley’s *Brady* claim amounts to sufficient evidence to overcome a subsequent time-barred PCRA petition is one to be made in state courts. 42 Pa. C.S. § 9545(b)(1). Under § 9545(b)(1)(ii), Pennsylvania law allows an otherwise untimely petition to be heard when “the facts upon which the claim is predicated were unknown to the petitioner and could not have been ascertained by the exercise of due diligence.” 42 Pa. C.S.A § 9545(b)(1)(ii). Therefore, the availability of state court remedies to exhaust the claim counsel against entering a stay.

substantial showing of the denial of a constitutional right under 28 U.S.C. § 2253(c)(2).

**BY THE COURT:**

**/s/ Chad F. Kenney**

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**CHAD F. KENNEY, JUDGE**